

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JAMES P. RYAN,

Plaintiff,

v.

CITY OF EVERETT MAYOR DEMARIA,
RUSSO, BRETON, DESMOND, SHEEHAN,
FINOCCHIO, FIELD, SOBOLOWSKI,
CALDERWOOD, MURPHY, BERGE,
DEKERMENJIAN, BARRINGER, MEJIA,
KARIMI, VERNER, SILVIA, LEE, LEONE,
SILVERSTEIN, AUSTIN, KOPELMAN,
MONDANO, MILLER, FREEMAN, FOLEY,
MYERS, DURETTE, DEMORE, CONLEY,
UTKE, COGLIANO, LOONEY, STATE REP.
MCGONAGLE, HEGERTY, DAY,
SUPERIOR CLERK SULLIVAN,
BOURQUIN, DA RYAN, O'NEIL, DA
ROLLINS, GRANDA, O'CONNOR, RIDGE,
GREENE, ST. LOUIS, LANDRY, DEVENEY,
REUSCH, PHILLIPSON, FABRICANT,
CARRION, MCLARNEY, BARRETT,
ADAMS,

Defendants.

C.A. No. 1:21-cv-11158-NMG

THE COMMONWEALTH DEFENDANTS' MOTION TO DISMISS

Defendants Matthew Berge, Luz Carrion, Daniel Conley, Matthew Day, Vincent Demore, Gregory Dekermenjian, William Durette, the Hon. Judith Fabricant, Anne Foley, William Freeman, Michele Granda, Nicholas Hegerty, Gerald Leone, Maura Looney, Samuel Miller, Jack Myers, Dennis O'Connor, Mary O'Neill, Alexander Philipson, Eli Reusch, Rachael Rollins, Marian Ryan, Casey Silvia, Michael Sullivan and John Verner ("Commonwealth Defendants") move to dismiss the Complaint pursuant to Rule 12(b)(1) and 12(b)(6).

This action arises from Plaintiff James Ryan’s grievances regarding a rental property that he owned 11 years ago in Everett, Massachusetts. Plaintiff challenges the evacuation of the property in 2009 due to alleged building code violations, the foreclosure on the property in 2010, and the purported failure of various individuals over the years to resolve his concerns about these proceedings. He has sued more than fifty defendants in the public and private sectors, most based on single conversations that he had with them years ago. Plaintiff appears to assert a claim for purported violations of the Due Process Clause of the Fourteenth Amendment, a state claim for fraud and intentional misrepresentation, and a claim for civil relief under the Racketeering Influence and Corrupt Organizations Act (“RICO”).¹

The Complaint is defective in several ways. First, the claims are barred by the applicable statutes of limitations, as the Complaint is essentially a challenge to a foreclosure action from more than ten years ago. Second, the prosecutorial and judicial defendants are entitled to absolute immunity from Plaintiff’s claims. Third, the Complaint fails to state a claim for which relief can be granted. The procedural due process claim fails because the Complaint does not plead the elements of a constitutional deprivation without adequate process. The Complaint also fails to plead the basic elements of either the civil RICO claim or the state law fraud and misrepresentation claim. Fourth, the *Rooker-Feldman* doctrine bars the Complaint. Fifth, the Commonwealth Defendants are entitled to qualified immunity from Plaintiff’s claims. Finally, in the event that only the federal claims are dismissed, the Court should decline to exercise jurisdiction over the state law fraud and misrepresentation claims, which have no merit.

¹ The Complaint also cites and quotes 28 U.S.C. § 2680, *see* Compl. at 22-23, but that provision pertains to Chapter 28, which governs liability of the United States, not the Commonwealth of Massachusetts or state employees. *See* 28 U.S.C. §§ 2674, 2680.

For the foregoing reasons and those set forth in the accompanying memorandum of law, the Commonwealth Defendants respectfully request that the Court dismiss the Complaint against them with prejudice.

Respectfully submitted,

Defendants Matthew Berge, Luz Carrion, Daniel Conley, Matthew Day, Vincent Demore, Gregory Dekermenjian, William Durette, the Hon. Judith Fabricant, Anne Foley, William Freeman, Michele Granda, Nicholas Hegerty, Gerald Leone, Maura Looney, Samuel Miller, Jack Myers, Dennis O'Connor, Mary O'Neill, Alexander Philipson, Eli Reusch, Rachael Rollins, Marian Ryan, Casey Silvia, Michael Sullivan and John Verner

By their Attorneys

MAURA HEALY
ATTORNEY GENERAL

/s/ Katherine B. Dirks
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Date: October 8, 2021

LOCAL RULE 7.1 CERTIFICATE

I certify that on August 10, 2021, I conferred with plaintiff James Ryan in an attempt to resolve or narrow the issue regarding this request. Plaintiff did not agree to the request.

/s/ Katherine B. Dirks
Katherine B. Dirks

CERTIFICATE OF SERVICE

I, Katherine B. Dirks, Assistant Attorney General, hereby certify that I have this day, October 8, 2021, served the foregoing document, upon all parties, by electronically filing to all ECF registered parties and by sending a copy, first class mail, postage prepaid to:

James P. Ryan
1268 Broadway, Unit C, #247
Saugus, MA 01906

/s/ Katherine B. Dirks
Katherine B. Dirks